THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.17938 of 2003

Dated:29.08.2006

Between:

Kalikiri Masthanaiah.

…Petitioners

and

Mandal Revenue Officer and others.

…Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.17938 of 2003

ORDER:

The petitioner is a resident of Ganapatipalem Village, Chittamuru Mandal in Nellore District. He filed the present Writ Petition seeking a writ of mandamus declaring the action of the first respondent in issuing proceedings dated 20.01.2003 as arbitrary and illegal. By impugned proceedings the Mandal Revenue Officer ordered to resume the land admeasuring Acs.2.35 cents in Survey No.403 situated at Ganapatipalem Village, and also directed the Mandal Revenue Inspector, Chittamuru, to take possession of the land from the petitioner.

The brief fact of the matter reveal the following events leading to this Writ Petition. An extent of Acs.2.35 cents in Survey No.403 of Ganapatipalem Village was given to the father of the petitioner on eksal lease (lease for one year) in 1971. After the death of his father, the petitioner continued to cultivate the land even though there was no specific extension of the eksal lease by the competent authority. Other villagers opposed the grant of lease to the petitioner and approached the District Collector in 1978. Ultimately, the matter went before the Commissioner of Land Revenue, who remanded the matter to the District Collector, who in turn by order dated 05.08.1983 confirmed the assignment in favour of the petitioner. This was again subject matter

of an unsuccessful revision before the Commissioner of Land Revenue, who dismissed the same on 19.02.1987 filed by Chippala China Veera Swamy and others. They filed a further revision before the Government, the third respondent herein, who issued orders in G.O.Ms.No.577, dated 09.06.1992, dismissing the said revision and observing that the cancellation of assignment after long lapse of time is not justifiable. The petitioner alleges that when there was a threat of dispossession, a suit, being O.S.No.185 of 1988 on the file of the Court of the District Munsif, Kota, was filed, and the same was decreed on 21.03.1997. However, they prevailed over the respondents, who on 07.07.2003 tried to interfere with the possession of the land on the ground that the Mandal Revenue Officer passed orders for resumption of the land by passing the impugned order. Be it also noted that the land is classified as Thopu Poramboke in the revenue records and is situated abutting Swarnamukhi River.

This Court admitted the Writ Petition on 29.08.2003 and directed the respondents not to dispossess the petitioner. The respondents filed application for vacating the interim order, *inter alia,* stating that the earlier orders of the Government have now been withdrawn. Therefore, the matter itself was heard finally and is being disposed of by this order.

The respondents filed a common counter admitting the eksal lease in favour of the father of the petitioner. It is stated that Chippala China Veeraswamy and sixteen others of Ganapatipalem Village have been disputing the assignment of land to the petitioner, that there was a comprise between the petitioner and those persons on 23.03.1995 when the petitioner agreed to retain Ac.1.10 cents and leave the balance land to Chippala China Veeraswamy and others. It is alleged that the petitioner also agreed to withdraw the suit, being O.S.No.185 of 1988. It is stated that the Government is not a party to the suit, which the petitioner agreed to withdraw as per the compromise. After issuance of G.O.Ms.No.577, directing the District Collector to issue notice to both the parties, the District Collector issued notices to both the parties and directed the Mandal Revenue Officer to resume the land, pursuant to which the impugned order was issued. It is also stated that the petitioner filed another suit, being O.S.No.75 of 2004, on the file of the Court of the Junior Civil Judge, Kota, seeking a direction for issuance of pattadar pass books.

The learned Counsel for the petitioner would place strong reliance on the orders of the Government in G.O.Ms.No.577, dated 09.06.1992. **Per contra,** the learned Assistant Government Pleader for Revenue (Assignment) has placed before this Court a copy of the order of this Court in W.P.No.10428 of 1992, dated 20.12.1993, as well

as the subsequent orders of the Government in G.O.Ms.No.187, Revenue (Assn.II) Department, dated 13.03.2001, to contend that G.O.Ms.No.577 has been withdrawn, and therefore, the petitioner cannot have any enforceable right.

The chronology of events till the issue of G.O.Ms.No.577, dated 09.06.1992, would show that the petitioner had a right, which could have been enforced in a Writ Petition. However, as rightly pointed out by the learned Assistant Government Pleader even before this Writ Petition was filed two other important events intervened. Chippala China Veeraswamy and sixteen others filed W.P.No.10428 of 1992 assailing G.O.Ms.No.577, dated 09.06.1992. In this Writ Petition the petitioner herein was arrayed as fifth respondent, who was very much represented by a Counsel who argued the case when the matter was heard. But, curiously, the affidavit accompanying this Writ Petition is silent on this aspect. This would show that the petitioner tried to withhold crucial fact from this Court and obtained *ad interim* orders. Secondly, while disposing of W.P.No.10428 of 1992 on 20.12.1993, the Government Order in G.O.Ms.No.577 dated 09.06.1992 was set aside and the matter was remitted to the Government with a direction to give notices to the petitioners and respondents therein and to dispose of the same. It is only thereafter, the Government issued G.O.Ms.No.187, dated 13.03.2001. A look at the addressees mentioned at the end of the Government Order would show that a copy thereof was also sent to the petitioner herein. Again the petitioner conveniently fails to make a reference to this Government Order. As observed hereinabove, the petitioner came to the Court placing reliance on G.O.Ms.No.577, which has been set aside by this Court and also no more in force by reason of the subsequent Government Order. The petitioner filed the present Writ Petition suppressing all facts, which cannot be appreciated.

The Writ Petition is devoid of any merit and is accordingly dismissed with costs quantified at Rs.2,000/- (Rupees Two Thousand only).

_____

(V.V.S.RAO, J)

29.08.2006
vs